

STATE OF MINNESOTA

DISTRICT COURT

Consolidated File No. 70-CV-09-19459

In re: Source Code Evidentiary Hearings in
Implied Consent Matters

Consolidated File No. 70-CR-09-19749

In re: Source Code Evidentiary Hearings in
Criminal Matters

**ORDER 18 - ORDER
REGARDING EXPERT
DEPOSITIONS, REVISING
DISPOSITIVE MOTION
BRIEFING DEADLINES, AND
SETTING MOTION DATES FOR
TWO OTHER ISSUES**

The above matters came before the Court on November 9, 2010 on the Source Code Coalition's¹ motion to compel the deposition testimony of two expert witnesses, Dr. Karl Schubert and Matthew Willis.² The Court scheduled and heard this motion on an expedited basis because of the Source Code Coalition's representation that the depositions of Dr. Schubert and Mr. Willis are necessary for them brief and argue the dispositive motions scheduled for hearing on November 23, 2010.

Two other issues were also raised at the hearing; the Source Code Coalition's motion to have portions of Computer Forensic Services' Expert Report made publicly available and the Commissioner of Public Safety's objection to the Source Code Coalition's identification of Thomas Workman as an expert witness. Although the substance of these was not addressed, the parties agreed upon a motion hearing date of the dispositive motion date already scheduled; November 23, 2010 at 9:00 a.m.

Appearances were as follows: Emerald Gratz, Kristi Nielsen, and David Voigt appeared on behalf of the Commissioner of Public Safety; William Bernard, Pamela Converse, Sean McCarthy, and Mark Schneider appeared as Liaison Counsel for the Prosecutors in the Criminal Matters; Charles Ramsay, Jeffrey Sheridan, and Lee Orwig appeared as Liaison Counsel on behalf of the Source Code Coalition; and John Degnan on behalf of Computer Forensic Services. Bill McNabb, counsel for CMI, Inc. was also present.

¹ The Source Code Coalition is the representative body for the majority of the parties on the criminal defense and implied consent petitioner sides of the issue assigned to the Court.

² Dr. Karl Schubert and Matthew Willis are the individuals who performed much of the work encompassed in the September 30, 2010 expert report of Computer Forensic Services; the company retained by the Source Code Coalition to perform an analysis of the source code of the Intoxilyzer 5000 EN.

Based upon the foregoing, the Court hereby makes the following:

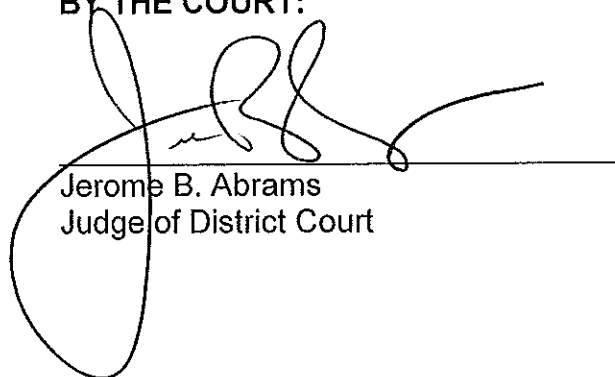
ORDER

1. The Deposition of Mark Lanterman, CEO and Chief Technology Officer of Computer Forensic Services, may be taken by the Source Code Coalition. Mr. Lanterman's deposition shall be limited to one hour of actual deposition time. The reasonable compensation for Mr. Lanterman's deposition is \$425.00 per hour. The Source Code Coalition shall provide payment in the amount of \$425.00 to Mr. Lanterman at the beginning of his deposition.
2. The Depositions of Dr. Karl Schubert and Matthew Willis may be taken by the Source Code Coalition. Each of these depositions shall each be limited to a total of seven hours of actual deposition time. The reasonable compensation for each of these depositions is \$2,200.00 per person per day for an anticipated total cost of \$4,400.00 for the deposition compensation of Dr. Schubert and Mr. Willis. The Court anticipates the Source Code Coalition's questioning will take up two thirds of the seven hour deposition time and the Commissioner of Public Safety's questioning will take up the remaining one third. Consequently, the Court has allocated the expenses accordingly. The Source Code Coalition shall provide payment of \$1,466.66 to Dr. Schubert at the beginning of his deposition and \$1,466.66 to Mr. Willis at the beginning of this deposition. The Commissioner of Public Safety shall initially be responsible for the remaining cost of \$733.33 per witness. The responsibility for the cost of the original deposition transcripts shall likewise be divided with two thirds of the cost born by the Source Code Coalition and one third born by the Commissioner of Public Safety. These amounts will be reallocated by the Court if the actual breakdown of the deposition time is substantially different than that anticipated.
3. There shall be no additional compensation for these deposition witnesses for travel or preparation.
4. All three of these depositions shall occur on November 18-19, 2010. They shall be held at the Minneapolis office of Briggs and Morgan, 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota.
5. Actual deposition time excludes breaks, lunch, and conferences of counsel.
6. Mark Lanterman, Matthew Willis, and Dr. Karl Schubert shall not be present during the deposition of any of the other two individuals.
7. The briefing schedule for the dispositive motion hearing is amended as follows:
 - a. All responses to the dispositive motions shall be submitted to the Court no later than 4:30 p.m. on November 22, 2010;
 - b. Any reply which may be necessary shall be submitted to the Court by 9:00 a.m. on November 23, 2010;
 - c. In the event additional time is necessary for any party responding to a dispositive motion as a result of the timing of the expert depositions, the party requesting more time to submit additional materials shall notify the Court no later than 4:30 p.m. on November 22, 2010.
8. The Source Code Coalition's motion to have portions of Computer Forensic Services' Expert Report made publicly available and the Commissioner of Public

Safety's objection to the Source Code Coalition's identification of Thomas Workman as an expert witness shall be scheduled for hearing at the same time and location as the dispositive hearing already scheduled in these matters; November 23, 2010 at 9:00 a.m.

Dated: 11-9-10

BY THE COURT:




Jerome B. Abrams
Judge of District Court

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 11/9/10
GREGORY A. LESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY

FILED 
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SCOTT COUNTY
COURTS